IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

Bail Appl..No. 4426 of 2007()

VIGILANCE CASE NO.3/07 OF THE VACB EAST RANGE KOTTAYAM

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: PETITIONER / ACCUSED NO.1

N.J.PHILIPOSE,PEZHUMKATTILAYA NEDUVELIL,
PEZHUMKATTILAYA NEDUVELIL,
AMAYANNOOR P.O., AYARKUNNAM VILLAGE,
KOTTAYAM DISTRICT.
(WORKING AS 2ND GRADE OVERSEER,KANJIRAPPALLY BLOCK

BY ADV. SRI.C.K.PRASAD
SRI.ABHILASH S.FRANCIS

RESPONDENTS: COMPLAINANT

STATE OF KERALA
REPRESENTED BY THE SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU,
EAST RANGE, KOTTAYAM, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4426 of 2007

Dated this the 24th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused in a crime registered under the Prevention of Corruption Act. He is an overseer. The 2nd accused is an Assistant Engineer and the 3rd accused is a contractor. The defacto complainant is a convenor of a road committee. The defacto complainant could not carry out the work himself and hence had to depend on the 3rd accused contractor. The crux of the allegation is that the 3rd accused on behalf of accused 1 and 2 demanded bribe. When portion of the bribe agreed upon was being paid to the 2nd accused, trap was laid and the offence was detected. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that no specific overt act has even been alleged against the 1st accused. The crux of the allegation is that the 3rd accused stated that an amount of Rs.5,000/- has already been paid to the 1st accused and that a further amount will have to be paid to the 1st accused. He contends that, in these circumstances, except the statements of the 3rd accused, there is nothing at all to indicate the complicity of the petitioner in the deal. In these circumstances, it is prayed that direction under Section 438 Cr.P.C may be issued in favour of the petitioner.

3. The application is opposed. The learned Public Prosecutor submits that the materials collected clearly indicate the complicity of

all the 3 accused persons, who were acting in league and that the bribe was demanded on behalf of both accused 1 and 2 through the 3rd accused, who was also actively involved in the deal. The learned Public Prosecutor submits that there are absolutely no circumstances which warrant or justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. It is not at this stage necessary to consider the matter in further detail. Suffice it to say that I find no merit in the contention that there is no material whatsoever against the 1st accused/the petitioner herein. At any rate, I am not satisfied that this is a fit case where the discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioner. This is an eminently fit case, where the petitioner must appear before the Investigating Officer or the Special Judge having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this application for anticipatory bail is, dismissed. Needless to say that if the petitioner surrenders before the Investigating Officer or the Special Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the Special Judge must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-